

PATENT
Docket No. 255.00010122

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Nolan et al.) Group Art Unit: 1645
Serial No.: 09/738,599)
Confirmation No.: 1240) Examiner: S. Devi
Filed: December 15, 2000)
For: NUCLEIC ACID ENCODING AN AVIAN *E.COLI* ISS POLYPEPTIDE AND
METHODS OF USE

DECLARATION UNDER 37 C.F.R. § 1.132

Assistant Commissioner for Patents
Washington, DC 20231

Dear Sir:

We, Lisa K. Nolan and Shelley M. Horne, declare and say as follows:

1. We are co-inventors of the subject matter claimed in the above-identified U.S. Patent Application Serial No. 09/738,599, filed December 15, 2000.
2. One of us, Lisa K. Nolan, received a Ph.D. in Medical Microbiology from the University of Georgia in 1992, a M.S. in Medical Microbiology from the University of Georgia in 1989, a D.V.M. from the University of Georgia in 1988, and a B.S. in Biology from the University of Georgia in 1975. Dr. Nolan has been employed since 1992 in the Department of Veterinary and Microbiological Sciences, North Dakota State University, and obtained the rank of Associate Professor in 1998. Dr. Nolan is also a Member of the Cellular and Molecular Biology Faculty, a Member of the Graduate Faculty and the Director of the Great Plains Institute of Food Safety at North Dakota State University. Dr. Nolan's research activities include work on bacterial diseases of animals, including those of public health and food safety importance. She has presented at over 150 seminars and scientific meetings and has 34 publications in refereed journals on these and other related topics.
3. One of us, Shelley M. Horne, received a Ph.D. in Microbial and Molecular Biology

from the University of North Dakota in 1994, a M.S. in Biology, specializing in Genetics and Development, from the University of North Dakota in 1987, and a B.S. in Biology from the University of North Dakota in 1985. From August 1995 to October 1997 and since October 1998, Dr. Horne has been employed as a Postdoctoral Research Associate in the laboratory of Dr. Lisa K. Nolan, Department of Veterinary and Microbiological Sciences, North Dakota State University. Dr. Horne's research activities include work in virulence mechanisms of *Escherichia coli*. She has seven publications in refereed journals.

4. We have read and are familiar with the Office Action mailed September 30, 2002 with respect to the above-identified application and with GenEmbl Accession AF042279, GI:5305230 (S.M. Horne, L.K. Nolan, C.W. Giddings, and S.J. Pfaff) (hereinafter "GenEmbl Accession AF042279"), a document having been cited by the Examiner in the September 30, 2002 Office Action, and make this Declaration in support of the patentability of the claims of application Serial No. 09/738,599.

5. Lisa K. Nolan and Shelley M. Horne are among the co-authors of GenEmbl Accession AF042279. The other authors of GenEmbl Accession AF042279, Catherine Wagner Giddings and Samantha Joe Pfaff, are not co-inventors of the above-identified application Serial No. 09/738,599.

Catherine Wagner Giddings was employed as a Technician in the Department of Veterinary and Microbiological Sciences, North Dakota State University during the preparation of GenEmbl Accession AF042279. Under the direction and supervision of Lisa K. Nolan, Catherine Wagner Giddings supported efforts to determine the nucleotide sequence reported in GenEmbl Accession AF042279.

Samantha Joe Pfaff was a Masters level student in the Department of Veterinary and Microbiological Sciences, North Dakota State University during the preparation of GenEmbl Accession AF042279. Under the direction and supervision of Lisa K. Nolan, Samantha Joe Pfaff assisted in the preparation of samples and sequencing reactions, but not in the determination of the nucleotide sequence reported in GenEmbl Accession AF042279.

6. Lisa K. Nolan and Shelley M. Horne are the inventors of the subject matter that is commonly disclosed in GenEmbl Accession AF042279 and in the above-identified application Serial No. 09/738,599.

7. We further declare that statements made herein to our knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 1/27/03

By: Lisa K. Nolan
Lisa K. Nolan

Dated: 1/27/03

By: Shelley M. Horne
Shelley M. Horne